

530 new

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name	TYSON	MORGAN	A.
	(Last)	(First)	(Initial)
Prisoner Number	C-81713		NOV 14 2007
Institutional Address CSP, SAN QUENTIN, SAN QUENTIN CA. 94964 <hr/>			

FILED
RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CV 07 5784**MORGAN A. TYSON**

Full Name of Petitioner

Case No. (To be provided by the
clerk of court)**JF (PR)**

vs.

ROBERT L. AYERS WARDEN**BOARD OF PAROLE HEARINGS** PETITION FOR A WRIT OF HABEAS CORPUSName of Respondent
(Warden or jailor)Read Comments Carefully Before Filing InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

07-5784-1

petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

**PETITIONER IS INCARCERATED AT SAN QUENTIN STATE PRISON AND
THEREFORE IS PROPERLY BEFORE THIS COURT.**

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

ALAMEDA COUNTY SUPERIOR COURT
Court

OAKLAND, CA
Location

(b) Case number, if known 75513
 (c) Date and terms of sentence 2-17-1984 15 years to Life + 5 years
 (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) (Yes.) No

Where? SAN QUENTIN STATE PRISON, SAN QUENTIN, CA 94974
(Name of Institution) (Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

SECOND DEGREE MURDER (California Penal Code Sec. 187

3. Did you have any of the following?

Arraignment: Yes x No Preliminary Hearing: Yes x No Motion to Suppress: Yes x No

4. How did you plead?

Guilty _____ Not Guilty Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes No _____

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes No _____
- (b) Preliminary hearing Yes No _____
- (c) Time of plea Yes No _____
- (d) Trial Yes No _____
- (e) Sentencing Yes No _____
- (f) Appeal Yes No _____
- (g) Other post-conviction proceeding Yes No _____

8. Did you appeal your conviction? Yes No _____

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes <input checked="" type="checkbox"/>	No _____	<u>3/20/07</u> (Year)	Affirmed (Result)
Supreme Court of California	Yes <input checked="" type="checkbox"/>	No _____	<u>4/23/07</u> (Year)	Denied (Result)
Any other court	Yes <input checked="" type="checkbox"/>	No _____	<u>3/2/07</u> (Year)	Denied (Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes _____ No

(c) Was there an opinion? Yes No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)? Yes No _____

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes No

Superior Court State of California

1. Alamead County Superior Court
Petition for Writ of Habeas Corpus
2. California Court of Appeal -First appellate District
Petition for Writ of Habeas Corpus
3. Supreme Court of California
Petition for Writ of Habeas Corpus

Petitioner has exhausted his state court remedies

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA

Type of Proceeding PETITION FOR WRIT OF HABEAS CORPUS

Grounds raised (Be brief but specific):

- a. VIOLATION OF DUE PROCESS (14th Amnd. of U.S. Const)
- b. Cal. Const., Art 1 Sec 178 CCR Sec 2402
- c. See attached points and authorities in support of
- of the petition for writ of habeas corpus
- d.

Result Denied Date of Result 3/2/07

II. Name of Court Court of Appeal, First Appellate District

Type of Proceeding Petition For Writ Of Habeas corpus

Grounds raised (Be brief but specific):

- a. Same As Above
- b.
- c.
- d.

Result Denied Date of Result 4/4/2007

III. Name of Court California Supreme Court

Type of Proceeding **PETITION FOR WRIT OF HABEAS CORPUS**

Grounds raised (Be brief but specific):

a. Same As Above

b. _____

c. _____

d. _____

Result **Denied** Date of Result **10/10/2007**

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes No **X**

(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: **SEE ATTACHED "INSERT" A. GROUND ONE , pages 1-3**

DUE PROCESS VIOLATIONS , VIOLATIONS OF THE U.S. CONSTITUTION

Supporting Facts: DUE PROCESS VIOLATION , VIOLATION OF THE U.S. Constitution , 14 Amendment Right Violations , Cal Const. Art 1 Sec 17 Cal Code of Regulations 2402

Claim Two: SEE ATTACHED "insert" B , Ground 2, pages 3-5

Supporting Facts: Petitioner cites the Court to :

In re Rosenkrantz(2002) 29 Cal 4th 616: In re Scott (2004) 119 Cal App. 4th 871 (Scott) (one)

Claim Three: _____

Supporting Facts: _____

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner submit the following authorities in support of his contented argument with the corroborated evidence submitted in form exhibits and transcripts attached.

Grounds -1

[1].

THE BOARD OF PRISON HEARINGS BY APPLYING AN ARBITRARY AND REPETITIVE REASON FOR PAROLE DENIAL BASED ON THE OFFENSE ITSELF VIOLATES PETITIONER'S PROTECTED LIBERTY INTEREST IN RELEASE ON PAROLE AND THE RIGHT TO DUE PROCESS IN THE PAROLE SUITABILITY

A California prisoner with a sentence of a term of years to life with possibility of parole has a protected liberty interest in release on parole and therefore a right to due process in the parole suitability proceedings. Board of Pardon v. Allen, 482 U.S. 369 (1987); Greenholtz v. Inmates of Nebraska Penal & Corrections Complex, 442 U.S. 1 (1979); Cal. P.C. 3041(b).

A critical issue in parole denial cases concerns the BPH's use of evidence about the murder that led to the conviction. Two cases provide the guideposts for applying Superintendent v. Hill some evidence standard on this point. Again, in Biggs v. Terhune, 334 F.3d 910 (9th Cir. 2003), the court explained that the value of the instant criminal offense which led to the incarceration for life term fades over time as a predictor of parole suitability. "The Parole Board" decision is one of "equity" and requires a careful balancing and assessment of the factors considered...A continued reliance in the future on an unchanging factor, the circumstances of the offense and conduct prior to imprisonment, runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation." Biggs, 334 F.3d at 916-17. Regardless of other case that criticize Biggs, the second District Court of Appeal, in the case of In re Wen Lee, (2006) 143 Cal.App.4th 1400. The governor's reversal of Lee's parole suitability was challenged and prevailed, *Inter Alia*,

1 the court found that Lee's crimes were not 'especially heinous, atrocious or cruel'.

2 The real issue where all these courts have common ground is not the offense, but
 3 whether the if a prisoner's release would unreasonably endangers public safety (See CCR,
 4 title 15, §2403, subd. (a) [parole denied if prisoner "will pose an unreasonable risk of danger
 5 to society if released from prison"]; see In re Scott (2005) 133 Cal.App.4th 573, 595.

6 The passage of time in prison count for something, exemplary behavior and
 7 rehabilitation in prison, but also counts for something according to Biggs. The Board stated
 8 for the record that petitioner has progressed and programmed exceptionally, yet the Board
 9 believe that the [Offense] outweigh the progress not matter how exceptional it is.
 10 Superintendent v. Hill's standard might be l quite low, but it does require that the decision not
 11 be arbitrary, and reliance on only the facts of the crime might eventually make for an arbitrary
 12 decision.

13 In determining parole suitability indisputably shows that Tyson makes a strong showing
 14 of his suitability for parole. Accordingly, the Court should vacate the Board" determination
 15 that Tyson is unsuitable for parole based on its arbitrary classification of the offense stated in
 16 three consecutive hearings. (See In re Smith, 109 Cal.App. 4th at p. 507 [where there is no
 17 evidence in the record to support a decision other than suitability, remand for rehearing would
 18 be an idle act}; accord, McQuillen v. Duncan ((9th Cir. 2003) 342 F.3d 1012 In the instant
 19 case, the BPH acknowledged the petitioner's progress and deemed it exceptional; "You have
 20 programmed exceptionally well." (See **EXHIBIT (A)**, Transcript of 7/25/06 hearing pg.
 21 112).

22 In re Rosenkrantz (2002) 29 Ca.4th 616, the Rosenkrantz court cautioned, sole reliance
 23 on the commitment offense might, in particular cases, violate §3041, subdivision (a)'s provision,

1 Insert -B

2 and might thus also contravene the inmate's constitutionally protected expectation of parole.

3 The Rosenkrantz court continued, that such violation could occur, "for example[,] where no

4 circumstances of the offense reasonably could be considered more aggravated or violent than the

5 minimum necessary to sustain a conviction for that offense." In re Rosenkrantz (2002) 29

6 Cal.4th 616, 683.)

7 Thus, the general rule is that a parole date should normally be set. Using the crime itself

8 as grounds for a parole denial is permissible but should not "swallow" that rule. See In re

9 Ramirez (2001) 94 Cal.App.4th 549, 570. While.

10 **Grounds -2**

11 [2].

12 **WHEN THE BOARD OF PAROLE HEARINGS SET ITS OWN**

13 **STANDARD OF INTERPRETATION OF THE LAW, AND FAILS**

14 **TO EXECUTE AND ENFORCE A LEGISLATURE'S STATUTES**

15 **AS INTENDED THE COURT HAS A DUTY TO INTERVENE TO**

16 **ENSURE THE SEPARATION OF POWERS DOCTRINE**

17 Petitioner exceeded all the maximum years prescribed by the matrix system. The

18 regulations contain a matrix of suggested base terms for several categories of crimes. See CCR,

19 tit. 15, §.2403. (See **EXHIBIT (F)**), where the base terms matrix for second degree murder

20 ranges from the low of 15, 16, or 17 years to a high of 19, 20, or 21 years, depending only on

21 some of the facts of the crime.

22 Petitioner exceeded all the maximum ranges for second degree murder conviction.

23 Calculating the sentence through the matrix is petitioner's expectation of protected rights to

24 liberty interest, expectation drawn directly from the sentence ".15 years to life with possibility

25 of parole." Yet, such matrix is not set by the BPH unless suitability has been decided, thus

26 putting the cart before the horse. However, the California Supreme Court has determined

27 "While the Board must point to factors beyond the minimum elements of the crime for which

the inmate was committed, it need engage in no further comparative analysis before concluding

1 that the particular facts of the offense make it unsafe, at that time, to fix a date for the prisoner's
 2 release," Dannenberg, 34 Cal.4th at 1071; See also In re Rosenkrantz, *supra*, at 862-83 Cal.
 3 2002), cert. denied, 538 U.S. 980 (2003) ("[t]he nature of the prisoner's offense, alone, can
 4 constitute a sufficient basis for denying parole" but might violate due process "where no
 5 circumstances of the offense reasonably could be considered more aggravated or violent than
 6 the minimum necessary to sustain a conviction for that offense").

7
 8 Petitioner submit, the BPH has uniformly applied §2402(c)1 to deny parole in every
 9 hearing, supported by the evidence of the transcribed hearings, and regardless of different
 10 commissioners had presided in every hearing, the language is for denial is the same sentence
 11 verbiage by verbiage. See **EXHIBIT (A)** pg 110-111), (**EXHIBIT (D)**, pg.65) and (**EXHIBIT**
 12 **(E)** , pg.54). That demonstrates invalidity of the Board's supposedly "detailed standards" which
 13 provides for meaningful application of the statute as opposed to blanket application. See (
 14 Dannenberg at pg. 1080, and 1096, *footnote 16*: "the Board must apply detailed standards when
 15 evaluating whether an individual inmate is unsuitable for parole on public safety ground.")

16
 17 The consistency of the "denial sentence" proves that the Board's decision making
 18 processes is regimented to dilute the property intended of detailed standards. Hence, it raises the
 19 question whether the Board usurp unlimited authority from vague regulations and become
 20 super-legislatures that are unaccountable to the people. The persistency of the Board to use the
 21 offense as a sole base for denial makes its decision arbitrary and runs the risk of violating the
 22 separation of powers doctrine by transforming every executive decision maker into a mini-
 23 legislature with the power to determine on an ad hoc basis what type of behavior satisfy their
 24 jurisdiction." People v. Ellison (1998) 68 Cal.App.4th 203, 211, quoting People v. Superior
 25 Court (Caswell) 1998) 46 Cal.3d 381, 402.) This articulation of the principle seems to speak

1 directly to the situation at hand. The Board, by its enactment and interpretation of Title 15,
2 §2402, has appropriated to itself absolute and unreviewable power over parole decisions for
3 inmates [like petitioner] serving life terms.
4

5 The Board's arbitrary application of Title 15, § 2402, to give itself a broad power to
6 declare every crime sufficient to deny parole forever is contrary to the spirit of the penal Code
7 provisions, the above regulation. "[I]t is an elementary proposition that statutes control
8 administrative interpretations." Ohio casualty Ins. Co. v. Garamendi (2006) 137 Cal.App.4th 64,
9 78.) In such instant where a violation of separation of powers doctrine occurred, the court must
10 intervene to strike (if necessary) any statutes which creates such risk. See Kasler v. Lockyer
11 (2000) 23 Cal.4th 472, 493, quoting Mistretta v. U.S. (1989) 488, U.S. 361, 382); Lockyer v.
12 County of San Francisco (2004) 33 Cal.4th 1055, 1068.
13

14 CONCLUSION

15 For all of the above mentioned, this court should declare petitioner's rights and issue a
16 writ of habeas corpus as prayed. Based on any or all of the foregoing reasons, this Court should
17 grant the relief requested in the petition.
18

19 Dated: 10-31-07

20 Respectfully submitted,
21

22 
23

24
25
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27
MORGAN A. TYSON
Petitioner in Pro Se.

Tyson v. BPH, in a writ of Habeas Corpus

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

Do you have an attorney for this petition? Yes No

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 10-31-07
Date

Morgan G. Tijer
Signature of Petitioner